IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 605 OF 1988

1) Ganpat Maruti Sutar
2) Mahadeo Maruti Sutar
3) Sonubai w/o. Maruti Sutar .. **Appellants/ (Orig. Plaintiffs)**

Vs.

1) Anna Daulata Jadhav
2) Babu Daulat Jadhav, since deceased by his heirs and legal representatives.

(A) Appa Babu Jadhav
(B) Jagannath Babu Jadhav
(C) Parvati Babu Jadhav .. **Respondents/ (Orig. Defendants)**

Shri K.Y. Mandlik, Advocate for Appellants.
Shri R.G. Ketkar, Advocate for Respondent no.1.

CORAM: ABHAY S. OKA, J.
DATE : 2ND SEPTEMBER,2004.

JUDGMENT :

1. On 22nd December 1988, the Second Appeal was admitted by the Court by passing the following order :

> "Admitted the substantial question of law being whether Plaintiffs claim was wronlgy dismissed in its entirety ruling that they claim through Pilu Sutar who

admittedly was a joint vendor of the property with deceased Defendant no.2. ?"

2. I have heard the Counsel appearing for the parties on the substantial question of law as framed in the said order.

3. The Appellants are the Original Plaintiffs and the Respondents are the Original Defendants. The suit was filed by Appellants for declaration, injunction and possession. The Appellants claim to be the exclusive owners of the open space described in the plaint and their case is that they have purchased the said open space (hereinafter referred to as the suit plot) from one Babu Bayaji Sutar on 10th November, 1972. The case of he Appellants is that the suit plot is being used by them for storing wood required for carpentry and fodder, fuel and other agricultural implements. The allegation in the Plaint is that the Respondent dug the foundation for construction of a wall on the eastern side of the suit plot in June 1977. The Appellants therefore instituted a suit. The suit was resisted by filing written statement by the Respondent no.1/Original Defendant no.1. The case made out by the Respondent no.1 is that he was in possession of the suit plot alongwith one Babu Daulata Jadhav. He contended that the suit plot was a open courtyard in the front side of his house.

He contended that in the place of old wall a new wall has been constructed on the same foundation even prior to the institution of the suit. The Respondent no.1 pleaded bar of limitation. The Respondent no.2 adopted the written statement of the Respondent no.1.

4. The Trial Court held that the Appellants have failed to prove their title in respect of the suit plot and their possession over the suit plot. The Trial Court held that the Respondents have proved their title to the suit plot by virtue of the sale deed dated 2nd July, 1934. Therefore the suit came to be dismissed. An appeal was preferred by the Appellants to the District Court. By the Judgment and Decree dated 30th November, 1987, the Learned District Judge dismissed the Appeal. The Learned District Judge held that the Appellants have failed to prove their exclusive ownership over the suit plot. The Appellate Court held that the Appellants at the most may be joint owners of the suit plot and they cannot institute the suit against the Respondents who were the co-owners.

5. Being aggrieved by the Judgements and Decrees of the Court below, the present Second Appeal has been preferred by the Appellants. Learned Counsel appearing for the Appellants

Shri Mandlik submitted that the Courts below have failed to take into consideration the evidence of Respondent no.1 that the suit plot and Parada was purchased by Respondent no.2 and one Pilu Bhau Sutar and that the boundaries in the sale deed dated 2nd July, 1984, 18th July, 1988 and 11th April. 1981 are correct. He submitted that title of the Appellants have been established. He submitted that the Respondents are claiming through Pilu Bhau Sutar. He therefore submitted that the Appellants had established their exclusive title in respect of the suit plot. Shri Ketkar appearing for Respondnet no.1 has supported the impugned Judgements and Decrees.

6. The perusal of the Judgment of the Appellate Court shows that the Appellate Court has referred to the contents of the relevant sale deeds. The Appellate Court has also considered the evidence led by the parties. The Appellate Court held that the evidence led by Resplendent no.1 was fully corroborated by the circumstances on record establishing that the suit plot was in front of the house of Respondent no.1 and there was no door from the house of the Appellants for entering the suit pot. Therefore, the Appellate Court disbelieved the case made out by the Appellants that they were is exclusive possession of the suit plot.

7. The evidence adduced by the Appellants does establish their exclusive title and possession over the suit plot and when the Appellate Court found that the Respondent no.1 were having right, title and or interest in the suit plot alongwith the Appellants, the relief as claimed by the Appellants was denied.

8. The findings recorded by the Appellate Court are based on the evidence on record. Merely because some other conclusion can be drawn on the basis of evidence on record, is no ground for interference under Section 100 of the Code of Civil Procedure, 1908. There is no merit in the Second Appeal and the same is dismissed with no orders as to costs.

SD/-

JUDGE